IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15402 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANAT S. DAVE

==========

ZUBER @ LAMBU AMIN SHAIKH
Versus
STATE OF GUJARAT AND OTHERS

==========

Appearance :
MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 29/08/2005

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the dated 5th April, 2005 passed by the respondent no.2, Commisioner of Police, Surat City under Section 3(i) of the Gujarat

Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act'), detaining the detenue as 'Dangerous Person' within the meaning of Section 2(c) of the PASA Act.

The detenue has challenged the order of detention mainly on the ground that the order is arbitrary, illegal, ab-initio and void and it suffers from non-application of mind and also violative of provisions of Article 22 of the Constitution of India.

2. According to the petitioner reliance is placed by the Detaining Authority on one registered offence against the detenue under Section 397 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act and two statements of un-named witnesses, for which privilege under Section 9(2) of the PASA Act, is claimed.

3. The petitioner challenged the order of detention on various grounds including the total non-application of mind on the part of the Detaining Authority on relevant materials which formed a base

in passing the order of detention, are not supplied to the petitioner detenue. The detenue has contended that firstly the copy of the detention order dated 05.04.2005 supplied to the petitioner and the mateials relied thereon specifically the order dated 02.04.2005 of learned Additional Sessions Judge, Second Fast Track Court, Surat passed in Criminal Misc. Application No.363 of 2005, as per the say of the petitioner only operative part of the order passed in bail application, was supplied to him. The order of detention is also challenged on various grounds about the fact that the detenue being in a judicial custody, the satisfaction of the detaining authority about the disturbance of the public order and other such grounds raised in the petition.

4. Mrs. Banna Dutta, learned advocate for the petitioner, straneously argued about the non-supply of full text of the order dated 2nd April, 2005 passed in Criminal Misc. Application No.363 of 2005 by the learned Additional Sessions Judge, 2nd Fast Track Court, Surat and submitted that by this act

of supplying truncated copy of the order of bail, the right of the detenue to make effective representatoin has been vitiated. It has affected the legal right of the petitioner which he could have exercised by making a representation to the Detaining Authority as guranteed by Article 22 (5) of the Constitution of India. She has submitted that non-supply of relevant materials by the Detaining Authority, though relied upon at the time of passing the order of detention, is nothing but a negation of valuable right conferred to the detenue by the Constitution of India. Therefore, according to the learned advocate for the petitioner continuous detention of the detenue is illegal. She has also placed reliance on two decisions of this Court in the case of SIRIBEN W/o. JITESHBHAI G. PATEL Vs. STATE OF GUJARAT in S.C.A.No.2546 of 2004 dated 17.04.2004 and also in the case of SHAIKH IKBAL SHAIKH GAFUR PATHAN Vs. STATE OF GUJARAT in S.C.A.No.5504 of 2002 dated 05.08.2002, whereby the learned Single Judge of this Court have taken view that if the court is satisfied that an important and vital document referred to and relied upon by

the Detaining Authority and the copy of the same is not supplied to the detenue then the order of detention cannot be sustained and it should be turned down.

In the above cases also the Detaining Authorities had not supplied the vital documents relied on by the Detaining Authority to make effective representation as per the valuable right guaranteed under Article 22(5) of the Constitution of India. According to her, this ground is sufficient enough to nulify the order of detention, and, therefore, other grounds to challenge the order of detention are not pressed into service.

5. Mrs. Hansha B. Punani, learned Assistant Government Pleader appearing for the respondent authorities has placed on record the affidavit in reply filed by Shri Sudhir Sinha, Commissioner of Police (Detaining Authority) Surat City and contended that exercise of powers by the Detaining Authority and passing of the order of detention

dated. 05.04.2005 is in accordance with the said provisions of law and the detenue being dangerous person, indulging into anti-social and criminal activities, is rightly detained and the basis of passing the order of detention i.e. registration of offence under Sections 397 and 114 of Indian Penal Code and also under Section 135 of the Bombay Police Act is properly relied upon by the Detaining Authority. According to her, requisite material did exist at the time of passing the order of detention and the witnesses have given statement against the detenue and after conscious application of mind the order of detention is passed. According to her, non-supply of full text of the order of bail cannot be said to be a non-application of mind on the part of the detaining authority to file aspect of supply of relevant document to the detenue. However, she has submitted that the decision of the learned Single Judge of this Court in Special Civil Application No.5504 of 2002 and in Special Civil Application No.2546 of 2004 cannot be pressed into service in view of the peculiar facts of the case.

6. Heard the learned advocates for the parties and I am inclined to accept the submissions of learned Advocate for the petitioner well formulated on the basis of two decisions of this Court. This court is also in full agreement with the ratio laid down by the order dated 17.04.2004 passed by this Court (Coram: D.P.Buch, J.) in Special Civil Application No.2546 of 2004, wherein the Hon'ble Court has observed vital aspect in Para-7, which is as under:-

> " The first ground argued is that the petitioner detenue has not been supplied with the very vital and important document referred to and relied upon by the detaining authority while passing the impugned order of detention and therefore that has resulted into serious prejudice to the petitioner in making effective representation. While enlarging the arguments on this point it is specifically pointed out that copy of the bail application preferred by the petitioner before the competent criminal has been supplied to the

petitioner. However, the entire order of bail passed by the learned Addl. Sessions Judge, Surat has not been supplied to the petitioner. Some parts of pages nos.7 and 8of the order of bail have been supplied. The order of bail passed by the learned Addl. Sessions Judge, Surat runs into 8 typed pages and first six pages are missing and they are not supplied to the petitioner. It is argued that these first six pages contain the grievances of the petitioner and the reasons assigned by the learned Addl. Sessions Judge while granting bail. If this order would have beens upplied to the petitioner, this could have helped the petitioner in making effective representation. It can legitimately be argued that these first 6 pages might not have been placed before the detaining authorities, otherwise they could have been supplied along with the bunch of papers served to the detenue along with the grounds of detention. Thus the important part of the decision of the learned Addl. Sessions Judge was not placed before the detaining

> authority by the sponsoring machinery. If the full order passed by the learned Addl. Sessions Judge has been placed before the detaining authority it can be inferred that the detaining authority might have reached to a different conclusion. It is settled principle of law that if the court is satisfied that an important and vital document is referred to and relied upon by the detaining authority and copy of the same is not supplied to the detenue, then the order of detention cannot sustain at all and it should be turned down."

It goes without saying that the detenue has valuable right under Article 22(5) of the Constitution of India to make effective representation against the order of detention so that all aspects can be taken care of in the representation since a statute framed under Central or State legislation to detain a person is an exception to the general rule, where the liberty of citizen is curtailed by the State functionaries in

exercise of powers given to such authorities under Article 22 of the Constitution of India. Since the above article curtails the right to life and liberty guaranteed under Article 21 of the Constitution of India, the detenue is empowered to claim violation of even procedural self-guard guaranteed.

In the present case, it is evident from record that the detenue is supplied only with operative part of the bail order dated 02.04.2005, though relied upon by the Detaining Authority for passing the order of detention, not supplied to the detenue in its full form or the text. Therefore, according to the learned advocate for the petitioner, the valuable right of the detenue to make effective representation flowing from Article 22(5) of the Constitution of India stands vitiated and the impugned order dated 05.04.2005 passed by the Detaining Authority i.e. respondent no.2 herein, is contrary to the said provisions, null and void and it cannot be sustained in eye of law. Therefore, the continuous detention of detenue vide order dated 05.04.2005 is also illegal, therefore, petitioner is

required to be released forthwith and the order of detention dated 05.04.2005 is required to be quashed and set aside.

7. For the forgoing reasons, this petition stands allowed. The impugned order of detention dated 05.04.2005 passed by the respondent no.2 is ordered to be quashed and set aside. The detenue is ordered to be set at liberty forthwith, if no longer require in any other case by any other authority. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

amit